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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Brenda R. Madison,

10 Plaintiff,

11 v.

12 Sonora Quest Laboratories, et al.,

13 Defendants.
14

No. CV-15-02152-PHX-GMS

ORDER

15 Pending before the Court is Defendant Sonora Quest Laboratories, et al.'s
16 ("Sonora Quest") Amended Motion to Dismiss. (Doc. 14.) For the following reasons,
17 the Court grants the motion in part and denies it in part.

18 **BACKGROUND**

19 In 2013, Plaintiff Brenda Madison filed a charge with the Equal Employment
20 Opportunity Commission ("EEOC") alleging employment discrimination and retaliation
21 against her former employer Sonora Quest. The EEOC issued her a Notice of Right to
22 Sue on June 18, 2015.

23 On September 21, 2015, Plaintiff filed a Complaint in Yuma County Superior
24 Court, which she later amended on November 18, 2015. In 2011, while employed at
25 Sonora Quest, Plaintiff filed an internal complaint against her supervisor on the grounds
26 of racial discrimination. Plaintiff alleged her supervisor intimidated her, stalked her, and
27 wrote her up without cause. Plaintiff also claimed that in 2013, her supervisor denied her
28 paid time off and that she was assigned a heavier workload than her co-workers. A

1 month later, Plaintiff complained about her supervisor to Sonora Quest's human
 2 resources department; the supervisor's conduct soon stopped. But on October 13, 2013,
 3 Plaintiff was notified of her termination because Sonora Quest had lost a contract.
 4 Plaintiff claims that she was "discriminated against, retaliated against, harassed,
 5 disciplined with cause, denied leave, subjected to different terms and conditions of
 6 employment, slander/defamation, and eventually laid off, which [she] believe[s] to be
 7 racial." (Doc. 12 ¶ IV.)

8 Plaintiff's complaint also alleges she had difficulty obtaining subsequent
 9 employment because of defamatory statements made about her by Defendants.

10 DISCUSSION

11 I. Analysis

12 A. Title VII Claims

13 Under the statutory provisions of Title VII, a claimant has ninety days after
 14 receiving a notice of dismissal or, "right-to-sue letter," from the EEOC in which to file a
 15 lawsuit. 42 U.S.C. § 2000e-5(f). The ninety-day period acts as a limitation period and
 16 therefore, if a claimant fails to file suit within this period, the action is time-barred. *E.g.*,
 17 *Payan v. Aramark Mgmt. Servs. Ltd. P'ship*, 495 F.3d 1119, 1127 (9th Cir. 2007).
 18 Plaintiff's *pro se* status does not extend this time limit. *Id.* Courts measure the start of
 19 the limitations period from the date on which a right-to-sue letter arrives at the claimant's
 20 address of record. *Id.* Where this date is known, the court will deem the claimant to have
 21 received notice on that date, regardless of whether claimant personally saw the right-to-
 22 sue letter. *Id.* In the event the date of actual receipt is unknown, a court will apply a
 23 three-day mailing presumption to determine notice of a right-to-sue letter. *Id.*

24 Plaintiff received her "right-to-sue" letter on June 18, 2015, from which Plaintiff
 25 had 90 days to file suit. However, Plaintiff did not file her original Complaint until
 26 September 21, 2015 (96 days) after receiving her right-to-sue letter. Therefore, even with
 27 a three-day mailing presumption to determine notice of a right-to-sue letter, Plaintiff
 28 failed to file her race discrimination and retaliation claims within the required 90-day

1 period. Plaintiff's Title VII race discrimination and retaliation claims are time barred and
2 are dismissed.

3 **B. Defamatory Claims**

4 As a *pro se* litigant, Plaintiff's Complaint must be construed liberally. *See Hughes*
5 *v. Rowe*, 449 U.S. 5, 9 (1980) ("It is settled law that the allegations of [a *pro se*
6 plaintiff's] complaint, 'however inartfully pleaded' are held 'to less stringent standards
7 than formal pleadings drafted by lawyers.'") (citations omitted); *Eldridge v. Block*, 832
8 *F.2d 1132, 1137* (9th Cir. 1987) ("The Supreme Court has instructed federal courts to
9 liberally construe the 'inartful pleading' of *pro se* litigants.") (citation omitted); *Ashelman*
10 *v. Pope*, 793 F.2d 1072, 1078 (9th Cir. 1986) ("[W]e hold [plaintiff's] *pro se* pleadings to
11 a less stringent standard than formal pleadings prepared by lawyers."); *Karim-Panahi v.*
12 *L.A. Police Dep't*, 839 F.2d 621, 623 (9th Cir. 1988) ("In civil rights cases where the
13 plaintiff appears *pro se*, the court must construe the pleading liberally and must afford
14 plaintiff the benefit of any doubt.").

15 Plaintiff alleges that Sonora Quest made defamatory comments about her that
16 negatively affected her ability to find subsequent employment; although, her Complaint
17 does not specifically identify any particular statement. Plaintiff's Complaint does allege
18 that "[o]n 09/24/2013 Elizabeth Correa told me that Beatriz Garcia had told her that I was
19 prejudice[d] against Hispanics and that Elizabeth should not speak to me." (Doc. 12 at
20 ¶ V.) The allegation, however, does not assert that this single instance was the same and
21 only communication made to her prospective employers; rather, the allegation appears
22 only to be illustrative of what she claims were the defamatory statements made about her
23 that cost her immediate re-employment opportunities.

24 Defendants argue that because she knew about the defamatory statement as of
25 September 24, 2013, her defamation claims are barred by the one-year statute of
26 limitation that applies in Arizona. *Ariz. Rev. Stat. § 12-541(1)*; *Boatman v. Samaritan*
27 *Health Servs., Inc.*, 168 Ariz. 207, 212, 812 P.2d 1025, 1030 (Ariz. Ct. App. 1990). This
28 argument has merit only as it applies to the specific defamatory statement that Plaintiff

1 became aware of on September 24, 2013. The timing of that statement is not attributed to
2 all other potential defamatory statements allegedly made to Plaintiff's prospective
3 employers. *Lim v. Superior Court*, 126 Ariz. 481, 482, 616 P.2d 941, 942 (Ariz. Ct. App.
4 1980) ("An action for defamation accrues and the Statute of Limitations begins to run
5 upon publication."). Thus, any alleged defamatory statements made by Defendants after
6 September 24, 2013 to any of Plaintiff's prospective employers would begin to accrue
7 individually beginning on their own publication.

8 Moreover, in some instances, courts have found that a cause of action for
9 defamation accrues upon discovery rather than publication. *Clark v. Airesearch Mfg.*
10 *Co.*, 138 Ariz. 240, 242, 673 P.2d 984, 986 (Ariz. Ct. App. 1983) (finding defamation
11 actions accrues upon discovery in situations in which the defamation is published in a
12 manner that is likely to be concealed from the plaintiff). It is not clear then, from the
13 pleadings, that Plaintiff's defamation claim should be dismissed.

14 Moreover, due to the dismissal of Plaintiff's Title VII claims, this Court no longer
15 has jurisdiction to decide the defamation claim. 28 U.S.C. § 1367 (2016). District courts
16 presumptively remand state law claims to state court when relinquishing jurisdiction over
17 a case involving pendent claims. *Carnegie-Mellon University v. Cohill*, 484 U.S. 343,
18 357 (1988). Accordingly, Plaintiff's defamation claim is remanded to state court.

19 CONCLUSION

20 For the foregoing reasons, Defendant's Amended Motion to Dismiss is granted in
21 part and denied in part.

22 IT IS THEREFORE ORDERED that:


23 1. Defendant's Amended Motion to Dismiss (Doc. 14) Plaintiff's Title VII
24 race discrimination and retaliation claims is **GRANTED**.

25 2. Defendant's Motion to Dismiss (Doc. 14) Plaintiff's defamation claim is
26 **DENIED**.

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Dated this 14th day of June, 2016.


Honorable G. Murray Snow
United States District Judge